

FILED
Parrish
SI
15

2009 NOV 20 P 3:30

3 RICHARD W. WIEKING
4 CLERK, U.S. DISTRICT COURT
5 N.D. CA-SAN JOSE

1 LIONEL Z. GLANCY (#134180)
 2 MICHAEL GOLDBERG (#188669)
 3 GLANCY BINKOW & GOLDBERG LLP
 4 1801 Avenue of the Stars, Suite 311
 5 Los Angeles, California 90067
 Telephone: (310) 201-9150
 Facsimile: (310) 201-9160
 E-mail: info@glancylaw.com

ADR

6 Attorneys for Plaintiff Steven Parrish E-filing
 7 [Additional Counsel on Signature Page]

8 *CJ deo*
 9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

11
 12 STEVEN PARRISH, Individually and on Behalf of C09 05520
 13 All Others Similarly Situated,) CLASS ACTION
 14 Plaintiff,)
 15 v.) COMPLAINT FOR VIOLATIONS
 16) OF FEDERAL SECURITIES LAWS
 17 SUNPOWER CORPORATION, THOMAS H.)
 18 WERNER and DENNIS V. ARRIOLA,)
 19 Defendants.)
 20) DEMAND FOR JURY TRIAL
 21
 22
 23
 24
 25
 26
 27
 28

CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS

1 Plaintiff Steven Parrish, by and through his attorneys, alleges the following upon information
 2 and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal
 3 knowledge. Plaintiff's information and belief is based upon, among other things, his counsel's
 4 investigation, which includes without limitation: (a) review and analysis of regulatory filings made
 5 by SunPower Corporation ("SunPower" or the "Company") with the United States Securities and
 6 Exchange Commission ("SEC"); (b) review and analysis of press releases and media reports issued
 7 by and disseminated by SunPower; and (c) review of other publicly available information concerning
 8 SunPower.

10 **NATURE OF THE ACTION AND OVERVIEW**

11 1. This is a federal class action on behalf of purchasers of SunPower's securities
 12 between April 17, 2008 and November 16, 2009, inclusive (the "Class Period"), seeking to pursue
 13 remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

14 2. SunPower designs, manufactures and delivers high-performance solar electric
 15 systems worldwide for residential, commercial and utility-scale power plant customers.

16 3. On November 16, 2009, SunPower shocked investors when it announced an internal
 17 investigation by its Audit Committee of certain unsubstantiated accounting entries related to cost of
 18 goods sold in the Company's Philippines operations. SunPower disclosed that the Company's Audit
 19 Committee concluded that the Company's previously issued interim financial statements for each
 20 of the 2009 quarterly periods, the previously reported financial results for the fiscal year ending
 21 December 28, 2008, the financial information in its quarterly reports on Form 10-Q for the 2009
 22 quarters, the financial information in the 2008 annual report on Form 10-K, and the guidance
 23 provided by the Company for the 2009 fiscal year, should no longer be relied upon, and that the
 24 Company may have to restate its 2009 interim financial reports and its 2008 annual report will be
 25
 26
 27
 28

necessary.

4. On this news, shares of SunPower's Class A common stock declined \$5.04 per share, approximately 18.51%, to close on November 17, 2009, at \$22.19 per share, on heavy volume, and shares of SunPower's Class B common stock declined \$4.43 per share, approximately 18.54%, to close on November 17, 2009, at \$19.47 per share, on heavy volume.

5. Throughout the Class Period, Defendants made false and/or misleading statements, as well as failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, Defendants made false and/or misleading statements and/or failed to disclose: (1) that the Company made unsubstantiated accounting entries during the Class Period; (2) that, as a result, the Company's financial results were overstated during the Class Period; (3) that the Company's financial results were not prepared in accordance with Generally Accepted Accounting Principles ("GAAP"); (4) that the Company lacked adequate internal and financial controls; and (5) as a result of the above, the Company's financial statements were materially false and misleading at all relevant times.

6. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages.

JURISDICTION AND VENUE

7. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

8. This Court has jurisdiction over the subject matter of this action pursuant to 28

1 U.S.C. §1331 and Section 27 of the Exchange Act (15 U.S.C. §78aa).

2 9. Venue is proper in this Judicial District pursuant to §28 U.S.C. §1391(b), §27 of
3 the Exchange Act (15 U.S.C. §78aa(c)).

4 10. Venue is proper in this Judicial District pursuant to 28 U.S.C. §1391(b) and Section
5 27 of the Exchange Act (15 U.S.C. §78aa(c)). Substantial acts in furtherance of the alleged fraud
6 or the effects of the fraud have occurred in this Judicial District. Many of the acts charged herein,
7 including the preparation and dissemination of materially false and/or misleading information,
8 occurred in substantial part in this District. Additionally, SunPower maintains its principal executive
9 offices within this Judicial District.

10 11. In connection with the acts, transactions, and conduct alleged herein, Defendants
12 directly and indirectly used the means and instrumentalities of interstate commerce, including the
13 United States mail, interstate telephone communications, and the facilities of a national securities
14 exchange.

15 **PARTIES**

16 12. Plaintiff, Steven Parrish, as set forth in the accompanying certification, incorporated
17 by reference herein, purchased SunPower securities during the Class Period, and suffered damages
18 as a result of the federal securities law violations and false and/or misleading statements and/or
19 material omissions alleged herein.

20 13. Defendant SunPower is a Delaware corporation with its principal executive offices
21 located at 3939 North First Street, San Jose, California, 95134.

22 14. Defendant Thomas H. Werner (“Werner”) was, at all relevant times, Chief Executive
23 Officer (“CEO”) and Director of SunPower.

15. Defendant Dennis V. Arriola (“Arriola”) was, at all relevant times, Chief Financial Officer (“CFO”) of SunPower.

16. Defendants Werner and Arriola are collectively referred to hereinafter as the "Individual Defendants." The Individual Defendants, because of their positions with the Company, possessed the power and authority to control the contents of SunPower's reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market. Each defendant was provided with copies of the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, each of these defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and/or misleading. The Individual Defendants are liable for the false statements pleaded herein, as those statements were each "group-published" information, the result of the collective actions of the Individual Defendants.

SUBSTANTIVE ALLEGATIONS

Background

17. SunPower designs, manufactures and delivers high-performance solar electric systems worldwide for residential, commercial and utility-scale power plant customers.

**Materially False and Misleading
Statements Issued During the Class Period**

18. The Class Period begins on April 17, 2008. On this day, SunPower issued a press

1 release entitled, "SunPower Reports First-Quarter 2008 Results." Therein, the Company, in relevant
2 part, stated:

Company Raises FY 2008 Guidance

- Generated first quarter 2008 revenue of \$274 million, up 92% year-on-year
 - Achieved \$0.15 GAAP net income share, \$0.39 Non-GAAP
 - Extended VAR dealer network by more than 50 dealers in Germany, Italy and Spain
 - Expanded relationships to further penetrate both the Japanese and Korean markets
 - Received silicon from M.Setek and DC Chemical on target

SAN JOSE, Calif., April 17, 2008 /PRNewswire-FirstCall via COMTEX News Network/ -- SunPower Corporation (Nasdaq: SPWR) today announced financial results for the first quarter 2008, which ended March 30, 2008. This press release contains both GAAP and non-GAAP financial information. Non-GAAP figures are reconciled to the closest GAAP equivalent figures on the final page of this press release. Please note that the company has posted additional, supplemental information related to its first quarter 2008 performance on the Events and Presentations section of the Investor Relations page on the SunPower website.

Revenue for the 2008 first quarter was \$273.7 million, up 22% from prior-quarter revenue of \$224.3 million and up 92% from year-ago first-quarter revenue of \$142.3 million. The Components and Systems segments accounted for 35% and 65% of first-quarter revenue, respectively.

For reporting purposes, the Systems segment generally represents products and services sold directly to the system owner, while the Components segment primarily represents products sold to installers and resellers. Additionally, both SunPower and third-party solar panels sold through the Systems segment channels are recorded as Systems segment revenue.

On a GAAP basis, SunPower reported gross margin of 19.5%, total operating income of \$14.8 million and diluted net income per share of \$0.15. These figures include non-cash operating expenses for amortization of purchase accounting intangible assets of \$4.3 million and non-cash, stock-based compensation of \$14.5 million. Additionally, for the three months ended March 30, 2008, GAAP cost of revenue includes \$2.2 million of one-time asset impairment charges relating to the discontinuation of our imaging detector product line and \$3.3 million for write-offs of certain solar manufacturing equipment which became obsolete due to new processes.

On a non-GAAP basis, adjusted to exclude non-cash charges for amortization of intangible assets, stock-based compensation, asset impairments and equipment

1 write-offs, SunPower reported total gross margin of 24.0%, operating income of
2 \$39.1 million and diluted net income per share of \$0.39. This compares with
3 prior-quarter non-GAAP gross margin of 25.3%, total operating income of \$32.4
4 million and \$0.39 diluted net income per share. The first quarter's non-GAAP gross
5 margin was influenced by a higher mix of revenue from our Systems segment which
6 posted a gross margin of 23.3% for that quarter and our Component segment's 200
7 basis points sequential improvement over the 2007 fourth quarter gross margin to
8 25.4%. Our Component segment's gross margin benefitted from higher volume and
9 modestly higher average selling prices. The increase in Components gross margin
was tempered by stable silicon costs, rather than expected slightly declining silicon
costs, as we secured incremental silicon supply to improve factory linearity in the
first and second quarters of 2008. Looking forward to the second quarter, we expect
our first meaningful reduction in average silicon cost which will contribute to our
estimated 510 to 610 basis point improvement in our Component segment's gross
margin.

10
11 "Our first quarter performance reflects the value our customers attribute to
12 SunPower's high-performance solar solutions," said Tom Werner, SunPower's CEO.
13 "SunPower's market leadership will continue to be driven through our focus on
14 brand, technology, cost and people. We are building a strong brand based on sound
fundamentals: the world's highest performance solar technology, deployed
aggressively across the leading global markets using scalable, responsive channel
platforms.

15 "During the first quarter of 2008, SunPower demonstrated the strength of its channel
16 diversification. Our dealer network continued to expand, not only in the United
17 States, but also in three key European markets as well: Germany, Italy and Spain. We
18 now have more than 200 dealers serving residential and commercial rooftop markets
globally with a rapidly increasing presence in Europe. In Asia, we expanded our
19 customer footprint with our first volume shipments into Japan and shipment of
components to Samsung in Korea. Our vertical integration strategy provides us with
20 the visibility and flexibility to serve a variety of end-markets, responding quickly to
both new market opportunities as well as risks.

21 "SunPower is positioned to meet the needs of the market with industry-leading solar
22 technology across the entire customer spectrum -- from large-scale systems designed
23 for utilities and large commercial clients to homeowners. Our proprietary technology
delivers the highest output per unit area of any commercially available solar system
24 and we intend to leverage this technology by aggressively expanding our solar cell
production by more than 150% in 2008 compared to 2007. This scale, combined with
lower silicon costs, higher efficiencies, thinner wafers and on-going quality and cost
improvements in our factories, will drive unit cost reduction. During the first quarter
25 of 2008, we continued to meet or exceed our manufacturing targets across both of our
26

1 fabs and our panel manufacturing facility.

* * *

"We expect SunPower's silicon supply costs to decline by approximately 10% during 2008 compared to 2007," continued Werner. "This cost improvement will amplify our silicon utilization benefits achieved through higher cell efficiency and thinner wafers. We are on track to achieve our planned improvements in our cost structure, and therefore we expect to reach our target financial model of 30% gross margin, 10% operating expenses and 20% operating margin, on a non-GAAP basis, no later than the first quarter of 2009. We are also on track to realize our mission of reducing installed systems cost by 50% by 2012.

9 "Based on the strong demand trends we saw in the first quarter of 2008, we are
10 raising our guidance for the fiscal year 2008 and expect the following non-GAAP
11 results: Total revenue of \$1.3 billion to \$1.375 billion, diluted net income per share
12 of \$2.10 to \$2.20. We are also reconfirming our 2009 forecast for total revenue to
13 increase at least 40% from 2008 levels. Consistent with our practice of offering
14 guidance for the current quarter, we expect second quarter of 2008 non-GAAP total
revenue of \$330 million to \$350 million, company non-GAAP gross margin of 23%
to 24% and non-GAAP diluted net income per share of \$0.48 to \$0.52, reflecting a
higher non-GAAP average tax rate of 24% to 25% in 2008 as compared to the tax
rate in 2007 which ended at 11.0%⁽¹⁾.

15 "On a business segment basis, we expect the following non-GAAP results for the
16 second quarter 2008: Components segment revenue of \$95 million to \$100 million,
17 driven by a planned increase in allocation of SunPower panels to the Systems
18 segment, and gross margin of 30.5% to 31.5%; Systems segment revenue of \$235
19 million to \$250 million and gross margin of 20% to 21%," said Werner. "We expect
20 the Components segment to benefit from the continued manufacturing ramp of our
next-generation technology and lower silicon cost and the Systems segment to benefit
from an increase in allocation of SunPower panels to the segment during the
quarter(2)."

[Footnotes omitted].

19. On May 9, 200, SunPower filed its Quarterly Report with the SEC on Form 10-Q
20 for the 2008 fiscal first quarter which reaffirmed the Company's financial results previously
21 announced on April 17, 2008. The Company's 10-Q also contained a Sarbanes-Oxley required
22 certification, signed by Defendant Werner, who certified:

- 1 1. I have reviewed this Quarterly Report on Form 10-Q of SunPower
 2 Corporation;
- 3 2. Based on my knowledge, this report does not contain any untrue statement of
 4 a material fact or omit to state a material fact necessary to make the
 5 statements made, in light of the circumstances under which such statements
 6 were made, not misleading with respect to the period covered by this report;
- 7 3. Based on my knowledge, the financial statements, and other financial
 8 information included in this report, fairly present in all material respects the
 9 financial condition, results of operations and cash flows of the registrant as
 10 of, and for, the periods presented in this report;
- 11 4. The registrant's other certifying officer(s) and I are responsible for
 12 establishing and maintaining disclosure controls and procedures (as defined
 13 in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over
 14 financial reporting (as defined in Exchange Act Rules 13a-15(f) and
 15 15d-15(f)) for the registrant and have:
- 16 (a) Designed such disclosure controls and procedures, or caused such
 17 disclosure controls and procedures to be designed under our
 18 supervision, to ensure that material information relating to the
 19 registrant, including its consolidated subsidiaries, is made known to
 20 us by others within those entities, particularly during the period in
 21 which this report is being prepared;
- 22 (b) Designed such internal control over financial reporting, or caused
 23 such internal control over financial reporting to be designed under our
 24 supervision, to provide reasonable assurance regarding the reliability
 25 of financial reporting and the preparation of financial statements for
 26 external purposes in accordance with generally accepted accounting
 27 principles;
- 28 (c) Evaluated the effectiveness of the registrant's disclosure controls and
 29 procedures and presented in this report our conclusions about the
 30 effectiveness of the disclosure controls and procedures, as of the end
 31 of the period covered by this report based on such evaluation; and
- 32 (d) Disclosed in this report any change in the registrant's internal control
 33 over financial reporting that occurred during the registrant's most
 34 recent fiscal quarter (the registrant's fourth fiscal quarter in the case
 35 of an annual report) that has materially affected, or is reasonably
 36 likely to materially affect, the registrant's internal control over

1 financial reporting; and

- 2 5. The registrant's other certifying officer(s) and I have disclosed, based on our
 3 most recent evaluation of internal control over financial reporting, to the
 4 registrant's auditors and the audit committee of the registrant's board of
 5 directors (or persons performing the equivalent functions):
 6 (a) All significant deficiencies and material weaknesses in the design or
 7 operation of internal control over financial reporting which are
 8 reasonably likely to adversely affect the registrant's ability to record,
 9 process, summarize and report financial information; and
 10 (b) Any fraud, whether or not material, that involves management or
 11 other employees who have a significant role in the registrant's
 12 internal control over financial reporting.

13 20. On July 17, 2008, SunPower issued a press release entitled, "SunPower Reports
 14 Second-Quarter 2008 Results." Therein, the Company, in relevant part, stated:

15 Company Raises FY 2008 and FY 2009 Guidance
 16 - Generated second quarter 2008 revenue of \$382.8 million, up 120% year- on-year
 17 - Achieved \$0.34 GAAP net income per share, \$0.61 non-GAAP
 18 - Announced agreement with Florida Power & Light in July for two projects totaling
 19 35 megawatts
 20 - Began site preparation for a 1 gigawatt solar cell fab in Malaysia
 21 - On track with 50% cost reduction plan, Q2 reductions in cell, module, materials and
 22 systems costs
 23 - More than 300 dealers worldwide serving the residential and small- commercial
 24 rooftop market
 25 - Announced world-record 23.4% efficient, full-scale prototype Gen 3 solar cell
 26 - Announced the appointment of Marty Neese as chief operating officer

27 SAN JOSE, Calif., July 17, 2008 /PRNewswire-FirstCall via COMTEX News
 28 Network/ -- SunPower Corporation (Nasdaq: SPWR) today announced financial
 results for the second quarter 2008, which ended June 29, 2008. This press release
 contains both GAAP and non-GAAP financial information. Non-GAAP figures are
 reconciled to the closest GAAP equivalent figures on the final page of this press
 release. Please note that the company has posted additional, supplemental
 information related to its second quarter 2008 performance on the Events and
 Presentations section of the Investor Relations page on the SunPower website at
www.sunpowercorp.com.

1 Revenue for the 2008 second quarter was \$382.8 million, up 40% from prior-quarter
2 revenue of \$273.7 million and up 120% from year-ago second-quarter revenue of
3 \$173.8 million. The Components and Systems segments accounted for 29% and 71%
of second quarter revenue, respectively.

4 For reporting purposes, the Systems segment generally represents products and
5 services sold directly to the system owner. Additionally, both SunPower and
6 third-party solar panels sold through the Systems segment channels are recorded as
Systems segment revenue. The Components segment primarily represents products
sold to installers and resellers.

7 On a GAAP basis, for the 2008 second quarter, SunPower reported gross margin of
8 24.3%, total operating income of \$45.0 million and diluted net income per share of
9 \$0.34. These figures include non-cash operating expenses for amortization of
10 purchase accounting intangible assets of \$4.0 million and non-cash, stock-based
compensation of \$18.6 million.

11 On a non-GAAP basis, adjusted to exclude non-cash charges for amortization of
12 intangible assets and stock-based compensation, SunPower reported total gross
margin of 26.4%, operating income of \$67.6 million and diluted net income per share
of \$0.61. This compares with prior-quarter non-GAAP gross margin of 24.0%, total
operating income of \$39.1 million and \$0.39 diluted net income per share. Overall
gross margin rose sequentially benefitting from a 630 basis point improvement in the
Components segment. Components gross margin rose to 31.7% due to lower silicon
costs, higher volume and stable to slightly higher average selling prices. Additionally,
the systems segment posted a gross margin of 24.2% reflecting a higher percentage
of SunPower panels and cost reduction in field construction. Looking forward to the
third and fourth quarter, the company expects continued improvement in company
gross margin.

19 "In 2008, SunPower has achieved the geographic and market segment diversity that
20 provides us with tremendous flexibility to respond to new opportunities and
minimize risk, such as the uncertainty our industry currently faces in the U.S. and
21 Spanish markets," said Tom Werner, SunPower's CEO. "We have built the
infrastructure to deliver our high-efficiency solar technology to customers on four
22 continents from residential rooftops to large-scale utility systems. With our Gen 2
cell lines ramping and further expansion of our manufacturing capabilities, we are
beginning to tap unserved demand for our high-efficiency solar systems in Korea,
23 Japan, Australia, Germany, Italy, and neighboring areas in Europe. The overall global
business environment remains very favorable as we continue to execute on our
long-term strategy focused on brand, technology, cost and people. We are well-
24 positioned for success entering the second half of the year.
25

1 "In the second quarter, SunPower benefitted from strong customer demand across
 2 multiple geographies including our Systems business segment. In addition to our
 3 power plant installations in Spain, we saw the dedication of a 1.4 megawatt project
 4 in Korea as well as the announcement of our framework agreement with Enfinity
 5 Management SPRL to supply 25 megawatts of projects in Italy by the end of 2009.
 6 Demonstrating SunPower's ability to offer solar at utility-scale, we announced an
 7 agreement with Florida Power & Light (FPL) for the largest photovoltaic power plant
 8 in the United States. Our agreements with FPL include both a 25 megawatt plant in
 9 DeSoto County, Fla., as well as a 10 megawatt plant at the Kennedy Space Center.
 10 Our power plant customers value SunPower's delivery of the highest-efficiency solar
 11 panels, high-energy collection systems technology, a decade of large-scale systems
 12 deployment experience, and a low levelized cost of energy (LCOE).
 13

14 "In our Components business segment, we continued to see strong demand
 15 worldwide. We more than doubled the number of our European dealers and further
 16 grew our dealer base in the United States. SunPower now has more than 300 dealers
 17 worldwide serving the residential and small-commercial rooftop market. Our
 18 multi-channel approach, vertically integrated business model and diversified
 19 customer base gives us a competitive advantage and will enable us to capitalize on
 20 the further adoption of solar as an alternative to conventional electricity generation.
 21

22 "SunPower continued to extend its technology lead during the quarter as we
 23 announced our world-record, 23.4 percent efficiency, prototype Generation 3 solar
 24 cell. This technology, expected to be in production in approximately two years, is a
 25 key element in our roadmap to reduce total systems costs to compete with wholesale
 26 and retail electric rates by 2012. Also, in order to meet expected future demand and
 27 scale economies to reach our cost reduction goals, SunPower announced plans to
 28 build its third solar cell manufacturing facility in Malaysia which, when completed,
 will have a nameplate capacity in excess of 1 gigawatt.

29 "Our cost reduction plans are on target for silicon procurement as well. We saw our
 30 silicon unit costs materially decline in the second quarter as we started to realize the
 31 benefit of our portfolio approach to silicon supply," continued Werner. "With all of
 32 our silicon suppliers delivering according to contract, we expect our silicon supply
 33 costs to continue to decline and remain fully contracted for our silicon needs through
 34 2010. Per plan, SunPower also benefitted from reductions in cell manufacturing and
 35 module costs, improved materials sourcing and more efficient project management
 36 including the deployment of our next-generation SunPower® T20 Tracker at our
 37 power plant projects in Spain.
 38

39 "With the decline in our silicon costs, further improvements in our manufacturing
 40 efficiency and continued progress in reducing downstream installation costs, we
 41 remain on track to achieve our target financial model of 30% gross margin, 10%

1 operating expenses and 20% operating margin, on a non-GAAP basis, no later than
 2 the first quarter of 2009. We are also on track to realize our mission of reducing
 3 installed systems cost by 50% from 2006 to 2012.

4 "Based on the strong demand trends in both existing and emerging markets and
 5 continued progress on our 50 percent reduction in installed system costs, we are
 6 raising our guidance for the fiscal year 2008 and expect the following non-GAAP
 7 results: Total revenue of \$1.39 billion to \$1.44 billion and diluted net income per
 8 share of \$2.26 to \$2.36. We also expect our 2009 total revenue to be in of the range
 9 of \$2.0 billion to \$2.1 billion, production capacity of 450+ megawatts and
 10 non-GAAP diluted net income per share of at least \$3.50. Consistent with our
 11 practice of offering guidance for the current quarter, we expect third quarter 2008
 12 non-GAAP total revenue of \$340 million to \$355 million, company non-GAAP gross
 13 margin of 26.5% to 27.5% and non-GAAP diluted net income per share of \$0.53 to
 14 \$0.57.(1)

15 "On a business segment basis, we expect the following non-GAAP results for the
 16 third quarter 2008: Components segment revenue of \$155 million to \$160 million,
 17 and gross margin of 33.5% to 34.5%; Systems segment revenue of \$185 million to
 18 \$195 million and gross margin of 21.5% to 22%. We expect the Components
 19 segment to benefit from the continued manufacturing ramp of our next-generation
 20 technology and lower silicon cost and the Systems segment to reflect a combination
 21 of changes in project and regional mix.(2)

22 "For the fourth quarter of 2008, we expect non-GAAP total revenue of \$395 million
 23 to \$425 million, reflecting an anticipated increase in both our Components and
 24 Systems segment revenue, company non-GAAP gross margin of 29% to 30%, in line
 25 with the company's long-term model, and non-GAAP diluted net income per share
 26 of \$0.73 to \$0.80. For the fourth quarter 2008, we expect Components segment
 27 revenue of \$200 million to \$210 million, and gross margin of 35% to 36% and
 28 Systems segment revenue of \$195 million to \$215 million and gross margin of 23%
 29 to 23.5%," concluded Werner.(3)

30 [Footnotes omitted].

31 21. On August 8, 2008, SunPower filed its Quarterly Report with the SEC on Form
 32 10-Q for the 2008 fiscal second quarter which reaffirmed the Company's financial results previously
 33 announced on July 17, 2008. The Company's 10-Q also contained a Sarbanes-Oxley required
 34 certification, signed by Defendant Werner, and substantially similar to the certification contained in
 35

1 ¶19, *supra*.

2 22. On October 16, 2008, SunPower issued a press release entitled, "SunPower
 3 Reports Third-Quarter 2008 Results." Therein, the Company, in relevant part, stated:

- 4 -- Generated third quarter 2008 revenue of \$377.5 million, up 61% year-on- year
- 5 -- Achieved \$0.26 GAAP net income per share, \$0.60 non-GAAP
- 6 -- Announced agreements with Pacific Gas and Electric Co., and Florida Power &
 Light Co., for power plants totaling 250 megawatts and 35 megawatts respectively
- 7 -- Grew residential and small-commercial rooftop dealer network by more than 25%
 sequentially
- 8 -- 500 systems representing 400 megawatts installed or under contract to date
 worldwide
- 9 -- Dedicated 8.4-megawatt power plant in Isla Major, Spain - total Spanish systems
 exceed 165 megawatts completed or under contract
- 10 -- Completed Cypress Semiconductor distribution of SunPower class B shares
- 11 -- Achieved free cash flow positive. Increased cash, cash equivalents and investments
 by \$95 million in Q3, business plan fully funded.

13 SAN JOSE, Calif., Oct 16, 2008 /PRNewswire-FirstCall via COMTEX News
 14 Network/ -- SunPower Corporation (Nasdaq: SPWRA, SPWRB) today announced
 15 financial results for the third quarter 2008, which ended September 28, 2008. This
 16 press release contains both GAAP and non-GAAP financial information. Non-GAAP
 17 figures are reconciled to the closest GAAP equivalent figures on the final page of this
 18 press release. Please note that the company has posted additional, supplemental
 19 information related to its third-quarter 2008 performance on the Events and
 20 Presentations section of the Investor Relations page located on the SunPower website
 21 at www.sunpowercorp.com.

22 Revenue for the 2008 third quarter was \$377.5 million and compares to \$382.8
 23 million in the second quarter of 2008 and \$234.3 million in the third quarter of last
 24 year. The Components and Systems segments accounted for 49% and 51% of third
 quarter revenue, respectively.

25 For reporting purposes, the Systems segment generally represents products and
 26 services sold directly to the system owner. Additionally, both SunPower and
 27 third-party solar panels sold through the Systems segment channels are recorded as
 28 Systems segment revenue. The Components segment primarily represents products
 sold to installers and resellers.

On a GAAP basis, for the 2008 third-quarter, SunPower reported gross margin of
 27.1%, total operating income of \$50.2 million and diluted net income per share of

1 \$0.26. These figures include non-cash operating expenses for amortization of
 2 purchase accounting intangible assets of \$4.2 million, and non-cash and stock-based
 3 compensation of \$18.9 million.

4 On a non-GAAP basis, adjusted to exclude non-cash charges for amortization of
 5 intangible assets and stock-based compensation, SunPower reported total gross
 6 margin of 29.2%, operating income of \$73.3 million and diluted net income per share
 7 of \$0.60. This compares with prior-quarter non-GAAP gross margin of 26.4%, total
 8 operating income of \$67.6 million and \$0.61 diluted net income per share. Overall
 9 gross margin improvement reflected continued growth in Components segment gross
 10 margin. For the 2008 third quarter, Components segment gross margin reached
 11 39.2%, benefitting from higher average conversion efficiency and better silicon
 12 utilization, continued reduction in silicon costs, higher volume, and slightly higher
 13 average selling prices. System segment gross margin was 19.7%, reflecting a shift in
 14 both geographic and product mix.

15 In the third-quarter, SunPower continued to demonstrate the advantage of a
 16 multi-segment, multi-geographic, vertical integration strategy as we executed very
 17 well in an evolving policy environment," said Tom Werner, SunPower's CEO. "By
 18 leveraging our flexible model, we expanded our global footprint, opened up new
 19 markets and laid the foundation for long-term success. Overall, global industry
 20 fundamentals remain strong and demand is increasing across multiple geographies.
 21 Our cost reduction roadmap is paying dividends as we are now selling at a levelized
 22 cost of energy which is cost- effective for our customers as evidenced by our recent
 23 utility-scale announcements with Pacific Gas and Electric Co. (PG&E), and Florida
 24 Power & Light Co. With the recent extension of the U.S. Investment Tax Credit, we
 25 now have a national solar market in the U.S. with long-term visibility and significant
 26 additional demand potential in all three market segments - residential, commercial
 27 and utility. We also saw uncertainty removed from the Spanish market in the third
 28 quarter. These developments make us even more confident in our planned
 performance as we look into next year.

29 In the Components business segment, during the third quarter, we grew our
 30 worldwide dealer network by more than 25 percent. This business is scaling very
 31 rapidly building on our multi-year investment in the infrastructure to serve a wide
 32 variety of markets using a core backbone of technology and services. With this
 33 channel investment, we offer our customers not only the best technology solutions
 34 but also the best customer experience which is a key platform for the SunPower
 35 brand. In addition, our Components business segment has further expanded its global
 36 footprint by delivering sales into the Middle East.

37 Our Systems business segment recorded another strong quarter in the power plant
 38 and commercial rooftop segments. To date, SunPower has installed, or has under
 39

1 contract, more than 165 megawatts of solar capacity in Spain including our recent
 2 dedication announcement of our 8.4 megawatt project in Isla Major, Spain.
 3 Additionally, we continued to expand our leadership position in the U.S. commercial
 4 market as Applied Materials activated a two- megawatt combination of roof and
 5 parking lot systems at their corporate campus in the third quarter, and we completed
 6 the largest single roof solar installation in the U.S. for Toyota Motor Sales. We also
 7 announced a building-integrated solar system surrounding the Living Roof at the new
 8 California Academy of Sciences, and dedicated our SunPower PowerGuard®) system
 9 on the roof of the headquarters of the U.S. Department of Energy in Washington,
 10 D.C.

11 "Our cost reduction programs remain on track, enabling us to open up new markets
 12 such as the U.S. utility market where the combination of our tracking and industry
 13 leading cell technologies offer utilities a very competitive leveled cost of energy.
 14 In a watershed announcement for the industry, we were selected by PG&E to supply
 15 the California utility with 250-megawatts of solar power by 2012. This project will
 16 be the first, true utility-scale photovoltaic power plant in the world when completed,
 17 delivering an average of 550,000 megawatt-hours of clean electricity annually. The
 18 project is contracted to begin power delivery in 2010 and be fully operational in
 19 2012. This win demonstrates that photovoltaic technology is competitive with other
 21 utility-scale generation options today. SunPower's success in the utility- scale market
 22 is a direct result of our high-efficiency solar panels paired with high-capacity
 23 SunPower tracker technology, which generates up to 30 percent more energy than
 24 fixed tilt systems.

25 "Due to strong industry fundamentals, continued execution of our vertical integration
 26 strategy, expected gross margin expansion, and our progress on our cost reduction
 27 programs, we will materially meet our target operating model in the fourth quarter.
 28 We are strategically well positioned for 2009 and remain on track to realize our
 mission of reducing installed systems cost by 50% from 2006 to 2012.

1 "Based on the strong global demand trends that we are seeing, as well as our internal
 2 execution on our goal of reducing system installed costs by 50% from 2006 to 2012,
 3 we expect the following fiscal year 2008 non-GAAP results: total revenue of \$1.44
 4 billion to \$1.46 billion and diluted net income per share of \$2.34 to \$2.41. Consistent
 5 with our practice of offering guidance for the current quarter, we expect fourth
 6 quarter 2008 non-GAAP total revenue of \$405 million to \$435 million, company
 7 non-GAAP gross margin of 29% to 30% and non-GAAP diluted net income per
 8 share of \$0.73 to \$0.80. We also expect our 2009 total revenue to be in of the range
 9 of \$2.05 billion to \$2.15 billion, production capacity of 450+ megawatts and
 10 non-GAAP diluted net income per share of at least \$3.50 (1).

11 "On a business segment basis, we expect the following non-GAAP results for the
 12

1 fourth quarter 2008: Components segment revenue of \$235 million to \$255 million,
 2 and gross margin of 37% to 37.5%; Systems segment revenue of \$170 million to
 3 \$180 million and gross margin of 18% to 19% (2). We expect the Components
 4 segment to benefit from the continued manufacturing ramp of our next-generation
 technology and lower silicon cost and the Systems segment to reflect a combination
 of changes in project and regional mix," concluded Werner.

5 [Footnotes omitted].

6 23. On November 7, 2008, SunPower filed its Quarterly Report with the SEC on Form
 7 10-Q for the 2008 fiscal third quarter which reaffirmed the Company's financial results previously
 8 announced on October 16, 2008. The Company's 10-Q also contained a Sarbanes-Oxley required
 9 certification, signed by Defendant Werner, and substantially similar to the certification contained in
 10 ¶19, *supra*.

12 24. On January 29, 2009, SunPower issued a press release entitled, "SunPower Reports
 13 Record Fourth-Quarter and Fiscal Year 2008 Results." Therein, the Company, in relevant part,
 14 stated:

- 16 - Generated fourth quarter 2008 revenue of \$401 million, up 79% year-on-year
- 17 - Recorded fiscal year 2008 revenue of \$1.43 billion, up 85% year-on-year
- 18 - Achieved fourth quarter 2008 GAAP net income per share of \$0.35, \$0.70
 non-GAAP
- 19 - Announced two multi-year agreements with European integrators totaling 230
 megawatts
- 20 - Added more than 350 residential and small-commercial dealers worldwide in 2008
- 21 - Appointed Dennis Arriola as the company's new chief financial officer
- 22 - Maintained strong liquidity with over \$436 million in cash and investments
- 23 - Expects fiscal year 2009 revenue of \$1.6 billion to \$2.0 billion

24 SAN JOSE, Calif., Jan 29, 2009 /PRNewswire-FirstCall via COMTEX News
 25 Network/ -- SunPower Corporation (Nasdaq: SPWRA, SPWRB) today announced
 record financial results for its 2008 fourth quarter and fiscal year, which ended Dec.
 26 28, 2008. Revenue for the 2008 fourth quarter was \$401 million and compares to
 \$378 million in the third-quarter of 2008 and \$224 million in the fourth-quarter of
 last year. The Components and Systems segments accounted for 56% and 44% of
 fourth-quarter revenue, respectively.

1
2 "Our fourth-quarter performance reflects the continued strength of our vertically
3 integrated business model, broad channel reach and geographic diversification," said
4 Tom Werner, SunPower's CEO. "Our flexible model enables us to rapidly deploy our
solutions across multiple geographies, especially in our worldwide dealer network
where we continue to see strong demand both in the United States and Europe. Our
Systems business also executed well in the fourth quarter as we commissioned
dozens of large scale solar projects globally."

6 On a GAAP basis for the 2008 fourth quarter, SunPower reported gross margin of
7 27.9%, total operating income of \$55 million and net income per diluted share of
\$0.35.

9 On a non-GAAP basis, adjusted to exclude non-cash charges for amortization of
10 intangible assets of \$4.2 million and stock-based compensation of \$18.2 million,
11 SunPower reported total gross margin of 29.9%, operating income of \$77.5 million
12 and net income per diluted share of \$0.70. This compares with prior-quarter
13 non-GAAP gross margin of 29.2%, total operating income of \$73 million and \$0.58
net income per diluted share. For the 2008 fourth quarter, Components segment gross
margin was 35.6% and Systems segment gross margin was 22.7%. The company's
GAAP and Non-GAAP fourth-quarter results include a \$6.3 million, or \$0.07 net
income per diluted share, foreign currency gain related to its Korean joint venture.

15 "Long-term solar market fundamentals remain in place and we are encouraged by the
16 commitment to renewable energy by President Obama and Congressional
leadership," continued Werner. "Given these factors, we are well positioned to take
17 advantage of growing global demand for solar this year and in the future, despite
uncertainty in today's economic and credit environment."

18 **2009 Guidance**

19 The company expects the following fiscal year 2009 non-GAAP results: total revenue
20 of \$1.6 billion to \$2.0 billion, net income per diluted share of \$2.20 to \$2.80(1) and
21 production capacity of more than 450 megawatts.

22 "The long-term solar industry fundamentals remain very positive and the company's
23 2009 sales pipeline is made up of identifiable customers and projects," said Dennis
Arriola, SunPower's chief financial officer. "Given the continuing weak credit
environment, our ability to meet the high-end of the revenue and earnings-per-share
24 ranges will be dependent on improved access to the project financing markets. We
expect our first-half of 2009 performance to be materially affected by seasonal
25 factors and the continuing impact of the credit crisis."

1 25. On February 26, 2009, SunPower filed its Annual Report with the SEC on Form
 2 10-K for the 2008 fiscal year. The Company's 10-K was signed by Defendant Arriola and reaffirmed
 3 the Company's financial results previously announced on January 29, 2009. The Company's 10-K
 4 also contained Sarbanes-Oxley required certifications, signed by Defendants Werner and Arriola,
 5 substantially similar to the certification contained in ¶19, *supra*
 6

7 26. On April 23, 2009, SunPower issued a press release entitled, "SunPower Reports
 8 First-Quarter 2009 Results." Therein, the Company, in relevant part, stated:

9 -- Signed 3-year, 300 to 600 MW supply agreement with FPL Group in April 2009
 10 -- Awarded 17 MW power plant agreement with Xcel Energy in April 2009 --
 11 Announced 8 MW power plant development agreement with Exelon in April 2009
 12 -- Received regulatory approval of 210 MW power purchase agreement with Pacific
 13 Gas and Electric -- Booked more than \$60 million in North American commercial
 14 systems projects -- Began construction of SunPower's first Italian power plant with
 15 Api Nova

16 SAN JOSE, Calif., April 23, 2009 /PRNewswire-FirstCall via COMTEX News
 17 Network/ -- SunPower Corporation (Nasdaq: SPWRA, SPWRB) today announced
 18 financial results for its 2009 first quarter which ended March 29, 2009. Revenue for
 19 the 2009 first quarter was \$214 million and compares to revenues of \$401 million in
 20 the fourth quarter of 2008 and \$274 million in the first quarter of last year. The
 21 Components and Systems segments each accounted for 50% of first-quarter 2009
 22 revenue.

23 "The first quarter of 2009 was the most challenging quarter we've seen since
 24 SunPower went public in 2005," said Tom Werner, SunPower's CEO. "Our quarterly
 25 performance was impacted by seasonality, the continuing effects of the credit crisis
 26 and difficult economic conditions. Despite these headwinds we were able to deliver
 27 strong gross margins in our Components business and positive non-GAAP net
 28 income. We have responded to current market conditions by moving to a
 29 demand-driven manufacturing model and reducing our planned operating expenses
 30 to align with our adjusted revenue outlook. Our recent announcements with FPL
 31 Group, Exelon and Xcel are representative of the range of opportunities in our utility
 32 and power plant business pipeline. Looking forward, we see positive trends emerging
 33 in a number of market segments, including the rooftop, distributed power plant and
 34 utility markets that give us confidence that we are well positioned for growth in the
 35 second half of 2009, 2010 and beyond.

1 "We were also pleased to announce today our expanded partnership with FPL Group
 2 through a significant supply agreement for future solar projects. This builds on our
 3 successful commencement of construction of the 25 megawatt DeSoto Next
 4 Generation Solar Energy Center in the first quarter of 2009. We look forward to
 5 working with FPL Group on future solar power plants around the country," Werner
 concluded.

6 On a GAAP basis for the 2009 first quarter, SunPower reported gross margin of
 7 22.3%, an operating loss of \$2.5 million and a net loss per share of (\$0.06). GAAP
 8 net loss per share for the first quarter of 2009 includes a \$5.0 million expense, or
 9 \$0.06 per share, for non-cash charges related to adoption of new FASB accounting
 rule FSP APB 14-1, which impacts how companies account for interest expense on
 convertible bonds.

10 On a non-GAAP basis, adjusted to exclude non-cash charges for amortization of
 11 intangible assets of \$4.1 million, stock-based compensation of \$9.5 million and
 12 non-cash interest expense of \$5.0 million, SunPower reported total gross margin of
 13 24.3%, operating income of \$11.5 million and net income per diluted share of \$0.05.
 14 This compares with fourth-quarter 2008 non-GAAP gross margin of 29.9%,
 operating income of \$77.5 million and \$0.69 net income per diluted share. For the
 2009 first quarter, Components segment gross margin was 29.5% and Systems
 segment gross margin was 19.0%.

15 **2009 Guidance**

16 The company expects the following fiscal year 2009 non-GAAP results: total revenue
 17 of \$1.3 billion to \$1.7 billion, net income per diluted share of \$1.25 to \$1.75 and
 18 production of up to 400 megawatts. The company also revised its 2009 capital
 expenditure outlook from \$350 million - \$400 million to \$250 million - \$300 million.

19 For the full year 2009, the company expects the following total company GAAP
 20 results: revenue of \$1.3 billion to \$1.7 billion and net income per diluted share of
 21 \$0.25 to \$0.75. GAAP earnings per share guidance include approximately \$0.20 per
 22 share of expense for non-cash charges related to the adoption of FASB accounting
 rule FSB APB 14-1.

23 27. On May 8, 2009, SunPower filed its Quarterly Report with the SEC on Form 10-Q
 24 for the 2009 fiscal first quarter. The Company's 10-Q was signed by Defendant Arriola and
 25 reaffirmed the Company's financial results previously announced on April 23, 2009. The Company's
 26

1 10-Q also contained Sarbanes-Oxley required certifications, signed by Defendants Werner and
 2 Arriola, substantially similar to the certifications contained in ¶19, *supra*.

3 28. On July 23, 2009, SunPower issued a press release entitled, "SunPower Reports
 4 Second-Quarter 2009 Results." Therein, the Company, in relevant part, stated:

5 ---- Q2 2009 revenue of \$298 million, GAAP EPS of \$0.26 and non-GAAP EPS of
 6 \$0.24 ---- Raised \$458 million in a successful equity and convertible debt offering
 7 ---- Implemented a regional panel manufacturing strategy ---- Launched the
 8 company's new T5 fixed-tilt commercial roof mounting system ---- Substantially
 9 completed a 25 megawatt project for Florida Power & Light ---- Expanded to
 approximately 600 SunPower dealers worldwide ---- Signed a \$100 million
 commercial project financing agreement with Wells Fargo Bank

10 SAN JOSE, Calif., July 23, 2009 /PRNewswire-FirstCall via COMTEX News
 11 Network/ -- SunPower Corp. (Nasdaq: SPWRA, SPWRB) today announced financial
 12 results for its 2009 second quarter which ended June 28, 2009. Revenue for the 2009
 13 second quarter was \$298 million which compares to revenues of \$214 million in the
 14 first quarter of 2009 and \$383 million in the second quarter of 2008. The company's
 Components and Systems segments accounted for 63% and 37% of second-quarter
 2009 revenue, respectively.

15 "Our second-quarter results reflect the continued success of our diversified segment
 16 and market strategy as we benefited from the further growth in our dealer network
 17 and executed on our large scale project commitments," said Tom Werner,
 SunPower's CEO. "Additionally, our operational focus during the quarter enabled us
 18 to show progress in reducing inventory levels and in controlling variable expenses.
 Our long-term strategy to build our brand based on superior experience, technology
 19 and return is paying off. As a result, we have successfully adjusted pricing to
 maintain market share and our price premium.

20 "Overall, we recorded solid second-quarter results in a demand driven market,
 21 consistent with our operating plan. In all of our markets, we are encouraged by the
 22 improving industry trends we are seeing in both end demand and financing and we
 23 are well positioned for further growth in the second half of the year and 2010. Our
 24 manufacturing costs are competitive today and we are ahead of plan to achieve our
 25 cost reduction goals. Customers continue to choose SunPower due to our superior
 roof top and power plant experience, industry leading performance of our solar
 panels and tracking technology, and our ability to drive attractive project returns for
 our customers."

1 On a Generally Accepted Accounting Principle (GAAP) basis for the 2009 second
 2 quarter, SunPower reported gross margin of 19.6%, operating income of \$9.9 million
 3 and net income per share of \$0.26. GAAP net income per diluted share for the second
 4 quarter of 2009 includes a \$21.2 million, or \$0.21 per diluted share, non-taxable gain
 5 related to the company's recent securities offering and a \$5.9 million, or \$0.04 per
 diluted share for non-cash interest charges associated with the adoption of the new
 FSP APB 14-1 accounting rule, which impacts how companies account for interest
 expense on convertible bonds.

6 On a non-GAAP basis, adjusted to exclude non-cash charges for amortization of
 7 intangible assets of \$4.1 million, stock-based compensation of \$11.6 million and
 8 non-cash interest expense of \$5.9 million, SunPower reported total gross margin of
 9 22.6%. Gross margin for the second quarter was negatively impacted by
 10 approximately \$12 million from lower factory utilization due to the company's
 11 planned transition to a demand driven manufacturing strategy, which successfully
 12 focused on reducing inventory levels. Operating income for the quarter was \$26.8
 13 million and net income per diluted share was \$0.24. This compares with first quarter
 14 2009 non-GAAP gross margin of 24.3%, operating income of \$11.5 million and
 15 \$0.05 net income per diluted share. For the 2009 second quarter, the Components
 16 segment non-GAAP gross margin was 24.6% and Systems segment gross margin was
 17 18.9%.

18 Diluted shares outstanding for the second quarter of 2009 reflect the impact of the
 19 company's recent capital raise completed May 5, 2009.

2009 Guidance

21 The company adjusted its fiscal year 2009 total company non-GAAP guidance as
 22 follows: total revenue of \$1.35 billion to \$1.7 billion, which compares to previous
 23 guidance of \$1.3 billion to \$1.7 billion, net income per diluted share of \$1.15 to
 24 \$1.60 and production of approximately 400 megawatts. The company's 2009 capital
 expenditure outlook remains unchanged at \$250 million to \$300 million. Full year
 2009 non-GAAP earnings per share guidance was adjusted to reflect the capital raise
 completed issuance of equity and convertible debt in May 2009.

25 "Our current pipeline and backlog gives us confidence that we will be able to meet
 26 our second half 2009 guidance. This confidence stems from a number of large
 systems we expect to have financed in the third quarter, as well as the positive trends
 we are seeing in the commercial and residential segments," said Dennis Arriola,
 SunPower's CFO.

27 For fiscal year 2009, the company expects the following total company GAAP
 28 results: revenue of \$1.35 billion to \$1.7 billion and net income per diluted share of

1 \$0.45 to \$0.90. GAAP earnings per share guidance includes a \$0.21 per share
 2 one-time, non-taxable gain related to the company's recent offering and an
 3 approximately \$0.12 expense for non-cash charges related to the company's previous
 4 adoption of FASB accounting rule FSB APB 14-1.
 5

6 29. On August 3, 2009, SunPower filed its Quarterly Report with the SEC on Form 10-Q
 7 for the 2009 fiscal second quarter. The Company's 10-Q was signed by Defendant Arriola and
 8 reaffirmed the Company's financial results previously announced on July 23, 2009. The Company's
 9 10-Q also contained Sarbanes-Oxley required certifications, signed by Defendants Werner and
 10 Arriola, substantially similar to the certifications contained in ¶19, *supra*.
 11

12 30. On October 22, 2009, SunPower issued a press release entitled, "SunPower Reports
 13 Third-Quarter 2009 Results." Therein, the Company, in relevant part, stated:
 14

- 15 - Record Q3 2009 revenue of \$466 million, record production of 110 megawatts
- 16 - GAAP EPS of \$0.13 and non-GAAP EPS of \$0.42
- 17 - 24 megawatt Montalto power plant in Italy financed - expected completion Q4 2009
- 18 - Grew global dealer network to approximately 900 partners
- 19 - Signed a 14-megawatt supply agreement with Casino Group in France
- 20 - Commissioned 25-megawatt project for Florida Power & Light and began
 21 construction of an additional 10-megawatt power plant
- 22 - Fab 3 construction in Malaysia on plan; production scheduled for the second half
 23 of 2010
- 24 - Further strengthened balance sheet - more than \$800 million in cash and
 25 investments

26 SAN JOSE, Calif., Oct 22, 2009 /PRNewswire-FirstCall via COMTEX News
 27 Network/- SunPower Corp. (Nasdaq: SPWRA, SPWRB) today announced financial
 28 results for its 2009 third quarter which ended September 27, 2009. Revenue for the
 29 2009 third quarter was \$466 million which compares to \$298 million in the second
 30 quarter of 2009 and \$378 million in the third quarter of 2008. The company's
 31 Components and Systems segments accounted for 64% and 36% of third-quarter
 32 2009 revenue, respectively.

33 "Our third-quarter results demonstrate the value of our diversified market and vertical
 34 integration strategy as we benefitted from our growing dealer channel and
 35 successfully executed on our large scale project commitments," said Tom Werner,
 36 SunPower's CEO. "We further expanded our dealer partner network into countries

such as France, Korea and Canada, and added new partners to our existing markets. As we build our utility and power plant business around the world, our superior technology performance and rapid deployment capability continues to make SunPower a preferred partner with customers and financiers.

"Operationally, our global Engineering, Procurement and Construction team achieved a new record in the third quarter with more than 60 megawatts (MW) of SunPower power plants under construction. The 25-MW DeSoto power plant, commissioned for Florida Power & Light, has now surpassed Nellis Air Force Base as the largest operating solar photovoltaic power plant in North America. In Europe, the financing of our Montalto project, the largest power plant in Italy, demonstrates SunPower's bankability as a fully integrated supplier. With strong market demand continuing, all of our manufacturing facilities are now fully operational, resulting in unit cost reductions in line with our plan," concluded Werner.

On a Generally Accepted Accounting Principles (GAAP) basis for the 2009 third quarter, SunPower reported gross margin of 19.1%, operating income of \$34.6 million and net income per diluted share of \$0.13. GAAP net income per share for the third quarter of 2009 includes \$5.3 million, or \$0.03 per share, of non-cash interest charges associated with the adoption of the new accounting guidance, which impacts how companies account for interest expense on convertible bonds.

On a non-GAAP basis, adjusted to exclude non-cash charges for amortization of intangible assets of \$4.1 million, stock-based compensation of \$13.1 million and non-cash interest expense of \$5.3 million, SunPower reported total gross margin of 20.7%. Operating income for the quarter was \$52.1 million and net income per share was \$0.42. This compares with second-quarter 2009 non-GAAP gross margin of 22.6%, operating income of \$26.8 million and \$0.24 net income per share. For the 2009 third quarter, the Components segment non-GAAP gross margin was 23.4% and Systems segment gross margin was 16.0%.

2009 Guidance

The company updated its fiscal year 2009 total company non-GAAP guidance as follows: total revenue of \$1.425 billion to \$1.50 billion, net income per diluted share of \$1.15 to \$1.25, capital expenditures of \$200 million to \$225 million, and production of approximately 400 MW.

"The company's continued focus on working capital management is showing positive results as we successfully managed inventory levels and ended the quarter with a stronger balance sheet and more than \$800 million in cash and investments," said Dennis Arriola, SunPower's CFO. "Although the financing markets remain challenging, we're starting to see some improvement in the availability of financing

1 for our projects. By starting the fourth quarter with a solid backlog of business and
 2 a growing pipeline of opportunities, we are confident that SunPower will finish the
 3 year strongly and is well positioned for growth in 2010."

4 For fiscal year 2009, the company expects the following total company GAAP
 5 results: revenue of \$1.425 billion to \$1.50 billion and net income per diluted share
 6 of \$0.50 to \$0.60. GAAP earnings per share guidance for 2009 includes a \$0.21 per
 7 share one-time, non-taxable gain related to the company's second-quarter 2009
 8 capital raise and approximately \$0.13 per share for non-cash charges related to the
 9 company's adoption of new accounting guidance.

10 31. On November 2, 2009, SunPower filed its Quarterly Report with the SEC on Form
 11 10-Q for the 2009 fiscal third quarter. The Company's 10-Q was signed by Defendant Arriola and
 12 reaffirmed the Company's financial results previously announced on October 22, 2009. The
 13 Company's 10-Q also contained Sarbanes-Oxley required certifications, signed by Defendants
 14 Werner and Arriola, substantially similar to the certifications contained in ¶19, *supra*.

15 32. The statements contained in ¶¶18-31 were materially false and/or misleading when
 16 made because defendants failed to disclose or indicate the following: (1) that the Company made
 17 unsubstantiated accounting entries during the Class Period; (2) that, as a result, the Company's
 18 financial results were overstated during the Class Period; (3) that the Company's financial results
 19 were not prepared in accordance with GAAP; (4) that the Company lacked adequate internal and
 20 financial controls; and (5) as a result of the above, the Company's financial statements were
 21 materially false and misleading at all relevant times.

The Truth Begins to Emerge

22 33. On November 16, 2009, SunPower issued a press release entitled, "SunPower
 23 Internal Review Identifies Unsubstantiated Accounting Entries." Therein, the Company, in relevant
 24 part, stated:
 25

1 SAN JOSE, Calif., Nov 16, 2009 /PRNewswire-FirstCall via COMTEX News
 2 Network/ -- SunPower Corp. (Nasdaq: SPWRA, SPWRB) today announced that
 3 based upon an internal review of its Philippine manufacturing operations, the
 4 company believes there may have been unsubstantiated accounting entries made in
 5 the first three quarters of 2009, some of which relate to the company's fiscal year
 6 ended December 28, 2008. Management informed the Audit Committee of the Board
 7 of Directors of these entries and the Audit Committee immediately commenced an
 8 investigation of the matter, which is ongoing. The company's Audit Committee and
 9 management have discussed these issues with the company's independent auditors.
 10

11 Based upon the preliminary findings of the ongoing investigation, the Audit
 12 Committee to date has identified accounting entries in the Philippines that may have
 13 overstated expenses in its cost of goods sold of approximately \$1 million in the first
 14 quarter ending March 29, 2009, and understated expenses in its cost of goods sold of
 15 approximately \$14 million in the second quarter ending June 28, 2009 and
 16 approximately \$2 million in the third quarter ending September 27, 2009. The
 17 company previously reported 2009 quarterly revenues and operating income under
 18 Generally Accepted Accounting Principles (GAAP) of \$213.8 million and a loss of
 19 \$2.5 million, respectively, in the first quarter, \$297.6 million and \$9.9 million,
 20 respectively, in the second quarter and \$466.3 million and \$34.6 million,
 21 respectively, in the third quarter. Full-year 2008 revenues were reported of \$1,434.9
 22 million and GAAP operating income of \$167.5 million.
 23

24 If the preliminary investigation findings prove to be final, they could impact the
 25 company's previously reported interim 2009 financial results. The company is also
 26 in the process of evaluating the financial impact of these adjustments on its
 27 previously reported results for the fiscal year and interim periods ended December
 28, 2008. The company currently estimates that approximately \$9 million of the
 29 identified accounting entries should have been recorded in 2008.

30 The company is working with the Audit Committee, the Committee's outside experts,
 31 and with the company's independent auditors to determine if any restatements of the
 32 2009 interim financial reports and the 2008 annual report will be necessary. Until the
 33 investigation is complete and such a determination is made, there can be no assurance
 34 that broader issues do not exist. Therefore, the company's previously issued interim
 35 financial statements for each of the 2009 quarterly periods, the previously reported
 36 financial results for the fiscal year ending December 28, 2008, the financial
 37 information in its quarterly reports on Form 10-Q for the 2009 quarters, the financial
 38 information in the 2008 annual report on Form 10-K, and the guidance provided by
 39 the company for the 2009 fiscal year, should no longer be relied upon. The company
 40 anticipates providing an update on the investigation within the next 30 days.
 41

42 Operationally, the company's outlook for the fourth quarter of 2009 remains
 43

1 consistent with its previous expectations for sales and operating income, subject to
 2 any costs, charges, and tax-related impacts relating to the ongoing investigation.

3 34. On November 16, 2009, SunPower filed a Current Report with the SEC on Form 8-

4 K. Therein, the Company, in relevant part, stated:

5 **Item 2.02. Results of Operation and Financial Condition**

6 On November 16, 2009, SunPower Corp. (the "Company") issued a press release
 7 announcing an internal investigation by its Audit Committee of certain
 8 unsubstantiated accounting entries related to cost of goods sold in the Company's
 9 Philippines operations. Such unsubstantiated accounting entries may affect the
 10 Company's previously reported financial results. The Company is working with its
 11 Audit Committee, the Committee's outside experts and the Company's independent
 12 auditors to determine if any restatements of its 2009 interim financial reports and its
 13 2008 annual report will be necessary. The full text of the press release is being
 14 furnished as Exhibit 99.1 to this report.

15 The information filed in this Item 2.02 and the exhibit attached hereto shall not be
 16 deemed "filed" for the purposes of Section 18 of the Securities Exchange Act of
 17 1934, and shall not be deemed incorporated by reference in any filing with the
 18 Securities and Exchange Commission under the Securities Exchange Act of 1934 or
 19 the Securities Act of 1933, whether made before or after the date hereof and
 20 irrespective of any general incorporation language in any filings.

21 **Item 4.02. Non-Reliance on Previously Issued Financial Statements or a
 22 Related Audit Report or Completed Interim Review**

23 On November 16, 2009, the Company issued a press release announcing an internal
 24 investigation by its Audit Committee of certain unsubstantiated accounting entries
 25 related to cost of goods sold in the Company's Philippines operations. The Company
 26 is working with its Audit Committee, the Audit Committee's outside experts and the
 27 Company's independent auditors to determine if any restatements of its 2009 interim
 28 financial reports and its 2008 annual report will be necessary. Until the investigation
 is complete and such a determination is made, there can be no assurances that broader
 issues do not exist. Therefore, on November 16, 2009 the Audit Committee
 concluded that the Company's previously issued interim financial statements for each
 of the 2009 quarterly periods, the previously reported financial results for the fiscal
 year ending December 28, 2008, the financial information in its quarterly reports on
 Form 10-Q for the 2009 quarters, the financial information in the 2008 annual report
 on Form 10-K, and the guidance provided by the Company for the 2009 fiscal year,

should no longer be relied upon. The Company anticipates providing an update on the investigation within the next 30 days.

The Company and Audit Committee are also evaluating whether the accounting issues under investigation were the result of one or more material weaknesses in the operation of the Company's internal controls over financial reporting. The Company is discussing and will continue to discuss these matters with its independent registered accounting firm, PricewaterhouseCoopers LLP.

(Emphasis in original).

35. On this news, shares of SunPower's Class A common stock declined \$5.04 per share, approximately 18.51%, to close on November 17, 2009, at \$22.19 per share, on heavy volume, and shares of SunPower's Class B common stock declined \$4.43 per share, approximately 18.54%, to close on November 17, 2009, at \$19.47 per share, on heavy volume.

SUNPOWER'S VIOLATION OF GAAP RULES IN ITS FINANCIAL STATEMENTS FILED WITH THE SEC

36. These financial statements and the statements about the Company's financial results were false and misleading, as such financial information was not prepared in conformity with GAAP, nor was the financial information a fair presentation of the Company's operations due to the Company's improper accounting for, and disclosure about its revenues, in violation of GAAP rules.

37. GAAP are those principles recognized by the accounting profession as the conventions, rules and procedures necessary to define accepted accounting practice at a particular time. Regulation S-X (17 C.F.R. § 210.4-01(a)(1)) states that financial statements filed with the SEC which are not prepared in compliance with GAAP are presumed to be misleading and inaccurate. Regulation S-X requires that interim financial statements must also comply with GAAP, with the exception that interim financial statements need not include disclosure which would be duplicative.

of disclosures accompanying annual financial statements. 17 C.F.R. § 210.10-01(a).

38. The fact that SunPower has indicated that it may have to restate its financial statements, and informed investors that these financial statements should not be relied upon is an admission that they were false and misleading when originally issued (APB No.20, 7-13; SFAS No. 154, 25).

39. Given these accounting irregularities, the Company announced financial results that were in violation of GAAP and the following principles:

(a) The principle that "interim financial reporting should be based upon the same accounting principles and practices used to prepare annual financial statements" was violated (APB No. 28, 10);

(b) The principle that "financial reporting should provide information that is useful to present to potential investors and creditors and other users in making rational investment, credit, and similar decisions" was violated (FASB Statement of Concepts No. 1, 34);

(c) The principle that "financial reporting should provide information about the economic resources of an enterprise, the claims to those resources, and effects of transactions, events, and circumstances that change resources and claims to those resources" was violated (FASB Statement of Concepts No. 1, 40);

(d) The principle that "financial reporting should provide information about an enterprise's financial performance during a period" was violated (FASB Statement of Concepts No. 1, 42);

(e) The principle that "financial reporting should provide information about how management of an enterprise has discharged its stewardship responsibility to owners (stockholders)

1 for the use of enterprise resources entrusted to it" was violated (FASB Statement of Concepts No.
2 1, 50);
3

4 (f) The principle that "financial reporting should be reliable in that it represents
5 what it purports to represent" was violated (FASB Statement of Concepts No. 2, 58-59);
6

7 (g) The principle that "completeness, meaning that nothing is left out of the
8 information that may be necessary to insure that it validly represents underlying events and
9 conditions" was violated (FASB Statement of Concepts No. 2, 79); and
10

11 (h) The principle that "conservatism be used as a prudent reaction to uncertainty
12 to try to ensure that uncertainties and risks inherent in business situations are adequately considered"
13 was violated (FASB Statement of Concepts No. 2, 95).
14

15 40. The adverse information concealed by Defendants during the Class Period and
16 detailed above was in violation of Item 303 of Regulation S-K under the federal securities law (17
17 C.F.R. §229.303).
18

CLASS ACTION ALLEGATIONS

19 41. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
20 Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased SunPower's
21 securities between April 17, 2008, and November 16, 2009, inclusive (the "Class Period") and who
22 were damaged thereby. Excluded from the Class are Defendants, the officers and directors of the
23 Company, at all relevant times, members of their immediate families and their legal representatives,
24 heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.
25

26 42. The members of the Class are so numerous that joinder of all members is
27 impracticable. Throughout the Class Period, SunPower's securities were actively traded on National
28

1 Association of Securities Dealers Automated Quotations Market ("NASDAQ"). While the exact
 2 number of Class members is unknown to Plaintiff at this time and can only be ascertained through
 3 appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the
 4 proposed Class. Millions of SunPower shares were traded publicly during the Class Period on the
 5 NASDAQ and as of October 28, 2009, SunPower had 54,940,045 shares of the Company's Class
 6 A common stock outstanding and 42,033,287 shares of the Company's Class B common stock
 7 outstanding. Record owners and other members of the Class may be identified from records
 8 maintained by SunPower or its transfer agent and may be notified of the pendency of this action by
 9 mail, using the form of notice similar to that customarily used in securities class actions.
 10
 11

12 43. Plaintiff's claims are typical of the claims of the members of the Class as all
 13 members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal
 14 law that is complained of herein.

15 44. Plaintiff will fairly and adequately protect the interests of the members of the
 16 Class and has retained counsel competent and experienced in class and securities litigation.

17 45. Common questions of law and fact exist as to all members of the Class and
 18 predominate over any questions solely affecting individual members of the Class. Among the
 19 questions of law and fact common to the Class are:

20 (a) Whether the federal securities laws were violated by Defendants' acts as
 21 alleged herein;

22 (b) Whether statements made by Defendants to the investing public during the
 23 Class Period omitted and/or misrepresented material facts about the business, operations, and
 24 prospects of SunPower; and

(c) To what extent the members of the Class have sustained damages and the proper measure of damages.

46. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation makes it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

UNDISCLOSED ADVERSE FACTS

47. The market for SunPower's securities was open, well-developed and efficient at all relevant times. As a result of these materially false and/or misleading statements, and/or failures to disclose, SunPower's securities traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired SunPower's securities relying upon the integrity of the market price of the Company's securities and market information relating to SunPower, and have been damaged thereby.

48. During the Class Period, Defendants materially misled the investing public, thereby inflating the price of SunPower's securities, by publicly issuing false and/or misleading statements and/or omitting to disclose material facts necessary to make Defendants' statements, as set forth herein, not false and/or misleading. Said statements and omissions were materially false and/or misleading in that they failed to disclose material adverse information and/or misrepresented the truth about SunPower's business, operations, and prospects as alleged herein.

5 49. At all relevant times, the material misrepresentations and omissions particularized
6 in this Complaint directly or proximately caused or were a substantial contributing cause of the

1 damages sustained by Plaintiff and other members of the Class. As described herein, during the
 2 Class Period, Defendants made or caused to be made a series of materially false and/or misleading
 3 statements about SunPower's financial well-being and prospects. These material misstatements
 4 and/or omissions had the cause and effect of creating in the market an unrealistically positive
 5 assessment of the Company and its financial well-being and prospects, thus causing the Company's
 6 securities to be overvalued and artificially inflated at all relevant times. Defendants' materially false
 7 and/or misleading statements during the Class Period resulted in Plaintiff and other members of the
 8 Class purchasing the Company's securities at artificially inflated prices, thus causing the damages
 9 complained of herein.

10

LOSS CAUSATION

11

13 50. Defendants' wrongful conduct, as alleged herein, directly and proximately caused
 14 the economic loss suffered by Plaintiff and the Class.

15 51. During the Class Period, Plaintiff and the Class purchased SunPower's securities at
 16 artificially inflated prices and were damaged thereby. The price of the Company's securities
 17 significantly declined when the misrepresentations made to the market, and/or the information
 18 alleged herein to have been concealed from the market, and/or the effects thereof, were revealed,
 19 causing investors's losses.

20

SCIENTER ALLEGATIONS

21

22 52. As alleged herein, Defendants acted with scienter in that Defendants knew that the
 23 public documents and statements issued or disseminated in the name of the Company were
 24 materially false and/or misleading; knew that such statements or documents would be issued or
 25 disseminated to the investing public; and knowingly and substantially participated or acquiesced in

the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, Defendants, by virtue of their receipt of information reflecting the true facts regarding SunPower, his/her control over, and/or receipt and/or modification of SunPower's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning SunPower, participated in the fraudulent scheme alleged herein.

53. Additionally, during the Class Period, and with the Company's securities trading at artificially inflated prices, on or around May 4, 2009, the Company completed concurrent public offerings of 10,350,000 shares of the Company's class A common stock, at a per share price of \$22.00, and \$230.0 million aggregate principal amount of 4.75% senior convertible debentures due 2014, for net proceeds to the Company of approximately \$417.6 million.

APPLICABILITY OF PRESUMPTION OF RELIANCE (FRAUD-ON-THE-MARKET DOCTRINE)

54. The market for SunPower's securities was open, well-developed and efficient at all relevant times. As a result of the materially false and/or misleading statements and/or failures to disclose, SunPower's securities traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired the Company's securities relying upon the integrity of the market price of SunPower's securities and market information relating to SunPower, and have been damaged thereby.

55. During the Class Period, the artificial inflation of SunPower's stock was caused by the material misrepresentations and/or omissions particularized in this Complaint causing the damages sustained by Plaintiff and other members of the Class. As described herein, during the

1 Class Period, Defendants made or caused to be made a series of materially false and/or misleading
 2 statements about SunPower's business, prospects, and operations. These material misstatements
 3 and/or omissions created an unrealistically positive assessment of SunPower and its business,
 4 operations, and prospects, thus causing the price of the Company's securities to be artificially inflated
 5 at all relevant times, and when disclosed, negatively affected the value of the Company stock.
 6 Defendants' materially false and/or misleading statements during the Class Period resulted in
 7 Plaintiff and other members of the Class purchasing the Company's securities at such artificially
 8 inflated prices, and each of them has been damaged as a result.

10 56. At all relevant times, the market for SunPower's securities was an efficient market
 11 for the following reasons, among others:

- 13 (a) SunPower stock met the requirements for listing, and was listed and actively
 14 traded on the NASDAQ, a highly efficient and automated market;
- 15 (b) As a regulated issuer, SunPower filed periodic public reports with the SEC
 16 and the NASDAQ;
- 18 (c) SunPower regularly communicated with public investors *via* established
 19 market communication mechanisms, including through regular dissemination of press releases on
 20 the national circuits of major newswire services and through other wide-ranging public disclosures,
 21 such as communications with the financial press and other similar reporting services; and
- 22 (d) SunPower was followed by securities analysts employed by major brokerage
 23 firms who wrote reports about the Company, and these reports were distributed to the sales force and
 24 certain customers of their respective brokerage firms. Each of these reports was publicly available
 25 and entered the public marketplace.

1 57. As a result of the foregoing, the market for SunPower's securities promptly digested
2 current information regarding SunPower from all publicly available sources and reflected such
3 information in SunPower's stock price. Under these circumstances, all purchasers of SunPower's
4 securities during the Class Period suffered similar injury through their purchase of SunPower's
5 securities at artificially inflated prices and a presumption of reliance applies.

NO SAFE HARBOR

8 58. The statutory safe harbor provided for forward-looking statements under certain
9 circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. The
10 statements alleged to be false and misleading herein all relate to then-existing facts and conditions.
11
12 In addition, to the extent certain of the statements alleged to be false may be characterized as forward
13 looking, they were not identified as "forward-looking statements" when made and there were no
14 meaningful cautionary statements identifying important factors that could cause actual results to
15 differ materially from those in the purportedly forward-looking statements. In the alternative, to the
16 extent that the statutory safe harbor is determined to apply to any forward-looking statements pleaded
17 herein, Defendants are liable for those false forward-looking statements because at the time each of
18 those forward-looking statements was made, the speaker had actual knowledge that the forward-
19 looking statement was materially false or misleading, and/or the forward-looking statement was
20 authorized or approved by an executive officer of SunPower who knew that the statement was false
21 when made.

11

25 //

26

27

28

FIRST CLAIM
**Violation of Section 10(b) of
The Exchange Act and Rule 10b-5
Promulgated Thereunder Against All Defendants**

59. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

60. During the Class Period, Defendants carried out a plan, scheme and course of
conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing
public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and
other members of the Class to purchase SunPower's securities at artificially inflated prices. In
furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took
the actions set forth herein.

14 61. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue
15 statements of material fact and/or omitted to state material facts necessary to make the statements
16 not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a
17 fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially
18 high market prices for SunPower's securities in violation of Section 10(b) of the Exchange Act and
19 Rule 10b-5. All Defendants are sued either as primary participants in the wrongful and illegal
20 conduct charged herein or as controlling persons as alleged below.

22 62. Defendants, individually and in concert, directly and indirectly, by the use, means or
23 instrumentalities of interstate commerce and/or of the mails, engaged and participated in a
24 continuous course of conduct to conceal adverse material information about SunPower's financial
25 well-being and prospects, as specified herein.

1 63. These defendants employed devices, schemes and artifices to defraud, while in
2 possession of material adverse non-public information and engaged in acts, practices, and a course
3 of conduct as alleged herein in an effort to assure investors of SunPower's value and performance
4 and continued substantial growth, which included the making of, or the participation in the making
5 of, untrue statements of material facts and/or omitting to state material facts necessary in order to
6 make the statements made about SunPower and its business operations and future prospects in light
7 of the circumstances under which they were made, not misleading, as set forth more particularly
8 herein, and engaged in transactions, practices and a course of business which operated as a fraud and
9 deceit upon the purchasers of the Company's securities during the Class Period.
10
11

12 64. Each of the Individual Defendants' primary liability, and controlling person liability,
13 arises from the following facts: (i) the Individual Defendants were high-level executives and/or
14 directors at the Company during the Class Period and members of the Company's management team
15 or had control thereof; (ii) each of these defendants, by virtue of their responsibilities and activities
16 as a senior officer and/or director of the Company, was privy to and participated in the creation,
17 development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii)
18 each of these defendants enjoyed significant personal contact and familiarity with the other
19 defendants and was advised of, and had access to, other members of the Company's management
20 team, internal reports and other data and information about the Company's finances, operations, and
21 sales at all relevant times; and (iv) each of these defendants was aware of the Company's
22 dissemination of information to the investing public which they knew and/or recklessly disregarded
23 was materially false and misleading.
24
25

26 65. The defendants had actual knowledge of the misrepresentations and/or omissions of
27

1 material facts set forth herein, or acted with reckless disregard for the truth in that they failed to
2 ascertain and to disclose such facts, even though such facts were available to them. Such defendants'
3 material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose
4 and effect of concealing SunPower's financial well-being and prospects from the investing public
5 and supporting the artificially inflated price of its securities. As demonstrated by Defendants'
6 overstatements and/or misstatements of the Company's business, operations, financial well-being,
7 and prospects throughout the Class Period, Defendants, if they did not have actual knowledge of the
8 misrepresentations and/or omissions alleged, were reckless in failing to obtain such knowledge by
9 deliberately refraining from taking those steps necessary to discover whether those statements were
10 false or misleading.
11

13 66. As a result of the dissemination of the materially false and/or misleading information
14 and/or failure to disclose material facts, as set forth above, the market price of SunPower's securities
15 was artificially inflated during the Class Period. In ignorance of the fact that market prices of the
16 Company's securities were artificially inflated, and relying directly or indirectly on the false and
17 misleading statements made by Defendants, or upon the integrity of the market in which the
18 securities trades, and/or in the absence of material adverse information that was known to or
19 recklessly disregarded by Defendants, but not disclosed in public statements by Defendants during
20 the Class Period, Plaintiff and the other members of the Class acquired SunPower's securities during
21 the Class Period at artificially high prices and were damaged thereby.
22

23 67. At the time of said misrepresentations and/or omissions, Plaintiff and other members
24 of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other
25 members of the Class and the marketplace known the truth regarding the problems that SunPower
26

was experiencing, which were not disclosed by Defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired their SunPower securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

68. By virtue of the foregoing, Defendants have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

69. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

SECOND CLAIM
Violation of Section 20(a) of
The Exchange Act Against the Individual Defendants

70. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

71. The Individual Defendants acted as controlling persons of SunPower within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other

statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

72. In particular, each of these Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

73. As set forth above, SunPower and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and/or omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

19 (a) Determining that this action is a proper class action under Rule 23 of the Federal
20 Rules of Civil Procedure:

(b) Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

25 (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this
26 action, including counsel fees and expert fees; and

1 Telephone: (212) 682-1818
2 Facsimile: (212) 682-1892

3 **LAW OFFICES OF HOWARD G. SMITH**
4 Howard G. Smith
5 3070 Bristol Pike, Suite 112
6 Bensalem, PA 19020
7 Telephone: (215) 638-4847
8 Facsimile: (215) 638-4867

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27 *Attorneys for Plaintiff*
28

**GLANCY BINKOW & GOLDBERG LLP
SWORN CERTIFICATION OF PLAINTIFF
SUNPOWER CORPORATION SECURITIES LITIGATION**

I, Steven Parrish, certify that:

1. I have reviewed the Complaint and authorized its filing.
2. I did not purchase SunPower Corp., the security that is the subject of this action, at the direction of plaintiff's counsel or in order to participate in any private action arising under this title.
3. I am willing to serve as a representative party on behalf of a class and will testify at deposition and trial, if necessary.

4. My transactions in SunPower Corp. during the Class Period set forth in the Complaint are as follows:

I bought 19 shares on 6/29/2009 at \$26.25 per share

I bought 5 shares on 7/31/2009 at \$32.17 per share

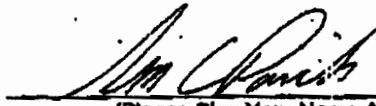
5. I have not served as a representative party on behalf of a class under this title during the last three years.

6. I will not accept any payment for serving as a representative party, except to receive my pro rata share of any recovery or as ordered or approved by the court, including the award to a representative plaintiff of reasonable costs and expenses (including lost wages) directly relating to the representation of the class.

Check here if you are a current employee or former employee of the defendant Company.

I declare under penalty of perjury that the foregoing are true and correct statements.

Dated: 11/16/09



(Please Sign Your Name Above)
STEVEN PARR SH